HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G.V. SEETHAPATHY
Writ Petition Nos.1635, 1636 & 1637 of 2007

Writ Petition No.1635 of 2007

Between:

G.V. Chandrasekhar

… Petitioner

And

The State Transport Appellate Tribunal,
A.P. Hyderabad by its Presiding Officer and others

… Respondents

Writ Petition No.1636 of 2007

Between:

G.V. Chandrasekhar

… Petitioner

And

The State Transport Appellate Tribunal,
A.P. Hyderabad by its Presiding Officer and others

… Respondents

Writ Petition No.1637 of 2007

Between:

Smt.G.V. Meenakshamma

… Petitioner

And

The State Transport Appellate Tribunal,
A.P. Hyderabad by its Presiding Officer and others

… Respondents

:: ORDER::

Counsel for the Petitioner: Shri T. Venkata Ramana

Counsel for Respondent No.3 in Writ Petition Nos.1635 and 1636 of 2007: Shri Noushad Ali

Counsel for respondent No.3 In Writ Petition No.1637 of 2007: None

February 20, 2007

Per G.S. Singhvi, CJ

The above noted three petitions are being disposed of by one order because common issues of facts and law arise for determination by this Court.

For the sake of convenience, we have taken the facts from Writ Petition No.1635 of 2007.

1) On the basis of stage carriage permits granted by the competent

authority, petitioner – G.V. Chandrasekhar, respondent No.3 – M. Nagaraja Naidu and some others are operating bus services on Madanapalle (Chittoor Bus stand) to Chowdepalli via Boyakonda route. The length of the route is 30.3 kms. The petitioner is operating two buses, one of which starts at Madanapalle and the other starts at Chowdepalli. Dr. D. Tippa Reddy is also operating two buses. Smt.J. Sumitra Bai and Shri M. Hemanth Kumar are operating one bus each, which start at Chowdepalli and Madanapalle respectively. The bus of respondent No.3 also starts at Madanapalle.

2) On 9-9-2004, Secretary, Regional Transport Authority, Chittoor (respondent No.2) convened a meeting of the operators for determination of the time schedule and passed order dated 16-12-2004 whereby he assigned specified timings for operating the services by each permit holder.

3) The petitioner challenged the aforementioned order by filing revision under Section 90 of the Motor Vehicles Act, 1988 (for short, 'the Act'), which was registered as R.P.No.26 of 2005. Respondent No.3 and Smt.J.Sumitra Bai jointly filed Writ Petition No.24480 of 2004 questioning the legality of order dated 16-12-2004. In that petition, Shri G.V. Chandrasekhar (the petitioner herein) and Dr.D. Tippa Reddy were impleaded as party respondents. The writ petition was disposed of by the learned Single Judge on 13-12-2005 by relegating the petitioners to the remedy of revision under Section 90 of the Act. The relevant portions of that order read as under:

> "The petitioners as well as the respondents 2 and 3 are operating stage carriages on the town service route from Madanapalli to Chowdepalli via. Boyakonda. It appears that all of them made separate applications before the first

respondent – Regional Transport Authority, wherein some of them requested for increase of trips and some others sought for revision of timings. The first respondent, having considered the requests of all of the operators, and having held a conference on 09-09-2004 passed the order dated 16-12-2004 revising the timings and increasing the trips initially fixed. The said order is under challenge in this writ petition contending inter alia that the first respondent erred in revising the timings without issuing any notice to the petitioners.

The learned counsel for the petitioners raised various contentions stating that the timings as fixed under the impugned order are not in the interests of the petitioners, and therefore the impugned order is liable to be set aside.

At the outset, it is to be noted that against the impugned order dated 16-12-2004 passed by the first respondent, a revision is maintainable before the State Transport Appellate Tribunal under Section 90 of the Motor Vehicles Act, 1988.

The learned counsel appearing for the second respondent submits that as a matter of fact the second respondent has already preferred such a revision and the same is pending before the State Transport Appellate Tribunal.

Accordingly, the writ petition is disposed of granting leave and liberty to the petitioners to prefer a revision as provided under the statute against the order dated 16-12-2004 within a period of four weeks from today. If any such revision is filed, the same shall be considered and decided along with the revision filed by the second respondent, which is pending, and appropriate orders be passed in accordance with law."

4) Thereafter, respondent No.3 filed revision under Section 90 of the Act. The same is pending before the State Transport Appellate Tribunal, Andhra Pradesh, Hyderabad (respondent No.1).

5) During the pendency of the revision petitions filed by him and respondent No.3, petitioner – G.V.Chandrasekhar filed an

application dated 28-3-2006 for amendment of the existing time schedule. On the very next day i.e. 29-3-2006, the incumbent of the post of respondent No.2, who was due to retire from service on 31-3-2006, passed order and modified the time schedule fixed vide order dated 16-12-2004.

6) Respondent No.3 challenged the aforementioned order by filing a revision petition, which was registered as R.P.No.65 of 2006. He pleaded that the time schedule fixed by order dated 16-12-2004 should not have been changed and, in any case, this could not have been done by respondent No.2 without giving notice and opportunity of hearing to the existing operators. By an order dated 7-12-2006, respondent No.1 allowed the revision and quashed order dated 29-3-2006 with a direction to respondent No.2 to decide the application of the petitioner afresh in accordance with law after giving notice to all the concerned sector operators including the revision petitioner. Paragraphs 5 and 6 of that order read as under:

> "5. Perused the records and the impugned order. It is stated in the impugned order that the timings of all the nine vehicles on the route were examined by the 1st respondent and found some disturbance was caused to the original timings of the 2nd respondent herein. But what are those disturbances said to have caused to the original timings of the 2nd respondent herein are not mentioned in the impugned order. It is also stated in the impugned order that the timings proposed by the permit holder i.e. 2nd respondent herein are marginally modified and revised timings are issued without dislocation to anybody as no consensus could be arrived. Without holding any timings conference and without hearing the sector operator, it is not known as to how the 1st respondent came to the conclusion that no consensus could be arrived. Admittedly, the petitioner is a sector operator plying his bus on

the very same route on which the 2nd respondent is plying his bus having complete common sector. The record does not show that any notice was issued to the petitioner before revising the timings of the 2nd respondent's bus. The timings of the 2nd respondent's bus were revised without giving notices to the affected parties on the route having common sector which is violative of principles of natural justice. I am therefore of the view that the matter requires reconsideration by the 1st respondent after giving notices to all the concerned sector operators including the petitioner. The decision relied by the 2nd respondent is not applicable to this case since the issue involved in that case relates to the grant of tentative timings whereas in the instant case the impugned order is relating to the grant of the revised timings.

6. In the result, the revision petition is allowed setting aside the impugned order. The matter is remanded to the 1st respondent for consideration afresh in accordance with law after giving notices to all the concerned sector operators including the petitioner."

7) Shri M. Hemanth Kumar and Dr.D. Tippa Reddy also challenged order dated 29.3.2006 in Revision Petition Nos.66 and 70 of 2006, which were also allowed by respondent No.1 vide separate orders dated 7-12-2006. The petitioner has challenged those orders in Writ Petition Nos.1636 and 1637 of 2007.

Before proceeding further, we deem it proper to mention that on 12-2-2007, these petitions were listed before the learned Single Judge (Hon'ble Shri Justice L. Narasimha Reddy). During the course of hearing, learned counsel for the petitioner appears to have made some unwarranted comments and, on that account, the learned Judge declined to hear the cases and directed that the same be placed before another Bench after obtaining orders from the Chief Justice. The order passed by the learned Single Judge is as follows:

"This Court heard the batch of three writ petitions for two and half hours. At the end, Sri T. Venkata Ramana, learned counsel for the petitioners had the courtesy of commenting about the age of a Judge, and he sarcastically stated that whenever he appears before a young Judge, he feels as though he did not learn any law for the 45 years of his standing.

This Court feels embarrassed to proceed with the Writ Petitions.

Post the Writ Petitions before another Bench, after obtaining orders from the Hon'ble the Chief Justice."

In view of the above, it was thought proper that the matters are heard by the 1st Division Bench, else other judges may also have to face similar embarrassment.

Shri T. Venkata Ramana, learned counsel for the petitioners argued that orders dated 7-12-2006 are liable to be quashed because respondent No.1 does not have the jurisdiction or power to entertain revision petitions filed against modification of the time schedule fixed by respondent No.2. He argued that after coming into force of the Act, the competitors in the business do not have any right to question the grant of permit to others and, therefore, revisions filed by the respondents questioning the legality of order dated 29-3-2006 passed by respondent No.2 should have been dismissed as not maintainable. Learned counsel further argued that the private respondents do not have the right to be heard in the matter of revision of time schedule and respondent No.1 committed a serious error by setting aside order dated 29-3-2006 on the ground of violation of the rules of natural justice. He then submitted that time schedule is required to be determined by the competent authority keeping in view the larger public interest and the competing operators cannot have any say in the matter. In support of this argument, learned counsel

relied on the judgments of the Supreme Court in **Mithilesh Garg v. Union of India**[1] and of this Court in **Secretary, Regional Transport Authority, Guntur v. E.Rama Rao**[2], **Rajappa Kawati v. G. Hanumanth Rao**[3], **P. Rehana Begum v. Joint Transport Commissioner and Secretary**[4], **Gopal Shankar v. State Transport Authority, Hyderabad**[5], **P. Nazeer Ahmed v. Joint Transport Commissioner and Secretary**[6] and order dated 8-2-2001 passed in Writ Petition No.17186 of 1994 – M.M. Rathnam v. State Transport Appellate Tribunal, Hyderabad and others.

Shri Noushad Ali, learned counsel representing the private respondents in Writ Petition Nos.1635 and 1636 of 2007 invited our attention to the provisions of Section 72 (2)(iv) and (xxii) of the Act and Rules 181 and 259 of the Motor Vehicles Rules, 1989 (for short, 'the Rules') and argued that unilateral revision of the time schedule by respondent No.2 was ex-facie illegal, arbitrary and unjustified and respondent No.1 did not commit any illegality by entertaining the revision filed by his clients. Shri Noushad Ali submitted that the extra-ordinary haste shown by the officer concerned in disposing of the application within 24 hours of its institution and that too without giving notice to the existing operators whose time schedule was regulated by order dated
16-12-2004 or at least consulting them, was rightly treated by respondent No.1 as sufficient for quashing order dated
29-3-2006. Learned counsel then argued that the petitioner is not entitled to challenge the maintainability of the revision petition because he did not prefer appeal against order dated 13-12-2005 passed by the learned Single Judge in Writ Petition No.24480 of

2004 whereby Shri M. Nagaraja Naidu and Smt.J. Sumitra Bai were relegated to the remedy of revision under Section 90 of the Act. He lastly argued that the power vested in respondent No.1 under Section 90 of the Act to revise an order made by a State Transport Authority or Regional Transport Authority is very wide and no illegality has been committed by respondent No.1 by setting aside order dated 29-3-2006 and remanding the matters for fresh consideration.

We have given our most anxious consideration to the rival submissions. Sections 72 (1), (2) (iv) and (xxii) and 90 of the Act and Rules 181 and 259 of the Rules, which have bearing on the adjudication of these petitions read as under:

Motor Vehicles Act, 1988

72. Grant of stage carriage permit:

(1) Subject to the provisions of section 71, a Regional Transport Authority may, on an application made to it under Section 70, grant a stage carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit:

Pro vided that no such permit shall be granted in respect of any route or area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a stage carriage permit, may grant the permit for a stage carriage of a specified description and may, subject lo any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:-

… … …

(iv) that copies of the time-table of the stage carriage approved by the Regional Transport Authority shall be exhibited on the vehicles and at specified stands and halts on the route or within the area;

… … …

(xxii) that the Regional Transport Authority may, after giving notice of not less than one month,-

(a) vary the conditions of the permit;

(b) attach to the permit further conditions:

Provided that the conditions specified in pursuance of clause (i) shall not be varied so as to alter the distance covered by the original route by more than 24 kilometres, and any variation within such limits shall be made only after the Regional Transport Authority is satisfied that such variation will serve the convenience of the public and that it is not expedient to grant a separate permit in respect of the original route as so varied or any part thereof;

90. Revision:

The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

Andhra Pradesh Motor Vehicles Rules, 1989

181. Grant or refusal of additional trips or change of timings:

In granting additional trips or change of timings the transport authorities shall have regard to the following:-

i) need for the provision of additional facilities or for revision of existing timings in the interest of public;

ii) special circumstances such as changes in the Railway timings, changes in the number of permits either on route or on the sectors of the route, or variations of the routes:

Provided that whenever rotation of timings is to be enforced, stage carriage carrying mails should be executed in the public interest and the rotation should be enforced only in respect of all the other stage carriages on the particular routes.

259. Schedule of timings:- The Transport Authority may, from time to time, --

i) by a general order, prescribe a schedule of timing for stage carriages running on specified routes; or

ii) by a Special Order, prescribe a schedule of timing for each stage carriage.

A reading of Rule 259 shows that the Transport Authority is empowered to issue general order and prescribe a schedule of timing for stage carriages running on specified routes or issue a special order prescribing a schedule of timing for each stage carriage. Rule 181 provides for disposal of the application for change of timings. This can be done by the competent authority in the interest of public. In terms of Section 72 (1), (2) (iv), the Regional Transport Authority is empowered to impose a condition on the stage carriage permit that copies of the time table of stage carriage approved by the Regional Transport Authority shall be exhibited on the vehicle and at specified stands or halts of the route or within the area.

In our opinion, once the time schedule is fixed by the competent authority, the permit holder is required to ply the vehicle strictly in accordance with the specified timings. This is absolutely

imperative for avoiding unhealthy competition among the permit holders operating on the same route. If no time schedule is fixed or the time schedule fixed by the competent authority is not adhered to, then there is bound to be chaos and the public for whose benefit the permits are granted is bound to be the ultimate sufferer.

We may now advert to the question whether before ordering change in the time schedule of the buses operated by the petitioner, respondent No.2 was required to comply with the rule of audi alterim partem.

It is true that Rule 181 does not expressly obligate the competent authority to hear other operators of the route, but this requirement has to be read implicit in the scheme of Rule 259 read with Rule 181 because any change in the time schedule is likely to have adverse impact on other operators and the members of public. Once the time schedule is fixed, every operator of the route knows the period during which he is required to operate the service. If the schedule/time-table is changed, then his business interest may get adversely affected. Therefore, he is entitled to represent his cause and oppose an application made by the other operator for change of the time schedule.

In our considered view, time schedule is fixed under Rule 259 for ensuring availability of transport services to the public at regular intervals. Once the competent authority fixes the time schedule, albeit after considering the interest of the public at large, the same cannot be altered according to its whims and caprice or with a view to favour one or the other operator and that too without hearing the other operators whose right to operate the services is likely to be adversely affected.

The judgments of the Supreme Court in **Mithilesh Garg v.**

Union of India (supra) and of this Court in **Secretary, Regional Transport Authority, Guntur v. E.Rama Rao** (supra), **Rajappa Kawati v. G. Hanumanth Rao** (supra), **P. Rehana Begum v. Joint Transport Commissioner and Secretary** (supra), **Gopal Shankar v. State Transport Authority, Hyderabad** (supra), **P. Nazeer Ahmed v. Joint Transport Commissioner and Secretary** (supra) do not have any bearing on these petitions. The policy of liberalization engrafted in the Act was intended to facilitate availability of more buses needed for meeting the acute scarcity of transport services. The availability of more services would naturally benefit the general public. Therefore, the existing permit holder cannot complain that before granting additional permits, the competent authority did not hear him. This is the reason why in **Mithilesh Garg v. Union of India** (supra), the Supreme Court ruled against the locus standi of the existing operators to challenge the grant of new permit and observed:

> "There is no threat of any kind whatsoever under the new Act from any authority to the enjoyment of the right of the existing operators under Article 19(1)(g) to carry on the occupation of transport operators. More operators mean healthy competition and efficient transport system. Overcrowded buses, passengers standing in the aisle, persons clinging to the bus-doors and even sitting on the roof-top are some of the common sights in this country. Moreoften one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black-smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter-public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the hands of few

> persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. It cannot be said that too many operators on a route are likely to affect adversely the interest of weaker section of the profession. The transport business is bound to be ironed out ultimately by the rationale of demand and supply. Cost of a vehicle being as it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case the transport system in a state is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal."

The judgments of this Court on which reliance has been placed by Shri T.Venkata Ramana are primarily based on the ratio of **Mithilesh Garg**'s case (supra).

In none of the above noted cases, the Supreme Court and this Court were not called upon to decide a question similar to the one raised in these petitions. Therefore, the propositions laid down therein cannot be relied for the purpose of quashing the orders under challenge.

Reverting to the factual matrix of these cases, we find that respondent No.2 changed the schedule of timings fixed vide order dated 16-12-2004 not only with undue haste and in utter violation of the rules of natural justice, but also by completely overlooking the fact that the revisions filed against order dated 16-12-2004 were pending before respondent No.1 and there was no extra-ordinary reason for changing the schedule merely at the asking of the petitioner.

The argument of Shri T.Venkata Ramana that the revisions filed by the private respondents were not maintainable is wholly meritless

and is liable to be rejected because,

i) even though the petitioner was party to Writ Petition No.24480 of 2004, which was disposed of by the learned Single Judge, by relegating the petitioners to avail the alternative remedy by filing revision under Section 90 of the Act, he did not think it proper to challenge the same, and

ii) he himself filed R.P.No.26 of 2005 against order dated 16-12-2004, which was pending on the date of making of application dated 28-3-2006 for change of the time schedule.

We are further of the view that the power vested in respondent No.1 under Section 90 is very wide and the said respondent can entertain revision against an order passed by the competent authority for change or modification of the time schedule fixed under Rule 259 of the Rules because such an order is not appealable under Section 89 of the Act.

No other point has been argued.

In the result, the writ petitions are dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

February 20, 2007

svs

[1] AIR 1992 SC 443

[2] AIR 1991 AP 11

[3] 1996 (1) ALD 476

[4] 1996 (4) ALD 1197

[5] 1997 (3) ALD 632

[6] 1999 (6) ALD 198